Case 372/87

Nicolas Progoulis
v
Commission of the European Communities

(Inadmissibility)

Order of the Second Chamber of the Court, 16 June 1988 3091

Summary of the Order

Officials — Actions — Acts adversely affecting them — Concept — Act which directly and immediately affects the applicant's legal situation — None — Action inadmissible (Staff Regulations, Art. 91 (1))

ORDER OF THE SECOND CHAMBER OF THE COURT
16 June 1988 *

In Case 372/87

Nicolas Progoulis, an official of the Commission of the European Communities, residing at 5 rue Luther, 1040 Brussels, represented by Pierre H. Delvaux and Dominique Lagasse, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 4 avenue Marie-Thérèse,

applicant,

* Language of the Case: French.

v

Commission of the European Communities, represented by Joseph Griesmar, Legal Adviser, acting as Agent, assisted by C. Verbraeken, of the Brussels Bar, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION essentially for the annulment of the implied decision of the Commission rejecting the applicant's request dated 17 December 1986,

THE COURT (Second Chamber),

composed of: O. Due, President of Chamber, K. Bahlmann and T. F. O'Higgins, Judges,

Advocate General: Sir Gordon Slynn
Registrar: J.-G. Giraud

after hearing the views of the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 15 December 1987 Nicolas Progoulis, an official of the Commission of the European Communities (hereinafter referred to as 'the applicant') brought an action under Article 91 of the Staff Regulations of Officials essentially for the annulment of the Commission's implied decision rejecting his request of 17 December 1986.

2 The applicant, a Greek national, is an official of the Commission in Grade B 3. Until 1 December 1985 he performed the duties of a reporting officer for the European Agricultural Guidance and Guarantee Fund (hereinafter referred to as the 'EAGGF'). In the course of those duties the applicant was responsible for

carrying out inspection visits concerning the implementation of investment projects. Such inspections are always carried out by two officials under the authority of the head of the Guidance Section of the EAGGF.

3 From 7 to 11 October 1985 the applicant and his immediate superior carried out an inspection visit to project No GR/33/31. The draft report which he drew up was slightly amended by his superior, although the proposal contained in his draft was not changed. On receiving the typed report for signature, the applicant made various comments, stating that he could not agree to the suggestion made by his head of division that he write his observations on a separate sheet to be annexed to the report and requesting that the report be amended to take account of the comments made.

4 The head of division then altered the report as requested by the applicant. The applicant signed this final version of the report, stating that his signature was valid only subject to certain conditions. In a memorandum attached by the applicant to this version of the report, he criticized *inter alia* the payment decision taken by the head of division. In reply, the head of division stated that it was not for the applicant to substitute his judgment for that of the officials responsible. In addition, he requested the applicant to sign the report 'again, without adding any comments'. When the applicant failed to return the report with his signature, the head of division arranged for the payment procedure to be followed.

5 Under those circumstances the applicant feared that he would be responsible under Article 21 of the Staff Regulations if he signed the report without drawing attention to the omissions in it and on 17 December 1986 he submitted a request under Article 90 of the Staff Regulations whose object was defined in the following terms:

'(1) I request that the report which was signed by me on 20 October 1986 with the observations contained on page 9 be accepted as it stands together with those observations.

In my opinion it is this report which should be used by the competent officials of the EAGGF in taking their final decision on the granting of aid.

(2) I ask that this request be placed in my personal file so that it may in any event be taken into consideration.'

6 On 19 May 1987 the applicant submitted a complaint against the implied decision rejecting his request. On 24 September 1987 the Commission answered the complaint in the following terms: 'The Commission is pleased to inform you that it has decided that the report in question should be adopted without containing your signature. Under those circumstances, the complaint must be regarded as being without purpose since the report drawn up and adopted by your superiors does not constitute a measure adversely affecting you within the meaning of Article 90 (2) of the Staff Regulations'.

7 This action was brought on 15 December 1987. In it the applicant claims that the Court should:

'(1) Annul the Commission's implied decision rejecting his request of 17 December 1986 and annul the Commission's reply of 24 September 1987 to his complaint of 19 May 1987;

(2) Order the Commission to pay the applicant the provisional sum of BFR 1 as compensation for non-material damage;

(3) Also, order the Commission to annex a copy of this application to all the reports of the missions in which the applicant has taken part and which are with the Court of Auditors;

(4) Order the Commission to pay the costs . . . '.

8 By an application lodged at the Court Registry on 12 February 1988 the Commission raised an objection of inadmissibility under Article 91 (1) of the Rules of Procedure of the Court on the ground that neither of the contested measures constituted an act adversely affecting the applicant.

9 It must be noted that under Article 92 (2) of the Rules of Procedure the Court may at any time of its own motion consider whether there exists any absolute bar to proceeding with a case, in particular the inadmissibility of the action, and give its decision in accordance with Article 91 (3) and (4) without opening the oral procedure.

10 According to Article 91 (1) of the Staff Regulations, the Court has jurisdiction in any dispute between the Communities and one of their officials regarding the legality of an act adversely affecting such a person. According to the established case-law of the Court, only acts which directly and immediately affect the applicant's legal situation can be regarded as adversely affecting him (see most recently, judgment of 21 January 1987 in Case 204/85 *Stroghili* v *Court of Auditors* [1987] ECR 389).

11 In this case, it cannot be concluded from any of the circumstances cited by the applicant that the Commission's partial rejection of his request is an act adversely affecting him.

12 The measure requested by the applicant in the first place, namely the acceptance of the report signed by him, is unconnected to his legal situation. In the event of a difference of opinion between two reporting officers for the EAGGF, it is for their superiors alone to decide on the elements to be retained in the final report. These are manifestly not interests which concern officials as individuals. As regards any interest which the applicant might have in not being obliged to sign a report which he considers defective, the Commission has already given him satisfaction by deciding that the report in question should be adopted without his signature. It follows from those circumstances that the applicant has no interest in having his request placed in his personal file or in having his application annexed to the reports of the missions in which he took part. Lastly, the claim for compensation for damage allegedly suffered by reason of the Commission measures on which this action is founded is also inadmissible in view of the inadmissibility of the action for annulment to which it is attached.

13 Consequently, the action must be dismissed in its entirety as inadmissible.

Costs

14 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, Article 70 of those Rules provides that, in proceedings brought by officials of the Communities, the institutions are to bear their own costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

(1) Dismisses the action as inadmissible;

(2) Orders the parties to bear their own costs.

Luxembourg, 16 June 1988.

J.-G. Giraud
Registrar

O. Due
President of the Second Chamber